



NEW APPLICATION ORIGINAL

ENGINEER
12425 Wes



Surprise, Arizona 85074
Website: surpriseaz.com
Phone: 623-583-6025
Fax: 623-583-0721

April 12, 2005

Arizona Corporation Commission
Attn: Railroad Safety Don Thompson
1200 W. Washington
Phoenix AZ, 85007

Arizona Corporation Commission
DOCKETED

APR 18 2005

DOCKETED BY	
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RE: BNSF Railroad crossing at Bell Road and Grand Avenue

Dear Commission:

RR-02635B-05-0283

This letter is to request approval by the Arizona Corporation Commission of a proposed project to construct a 225' right turn lane for westbound Bell Road at the intersection of Grand Avenue. The work consists of installing new vertical curb and gutter, provide sidewalk, extend the rail crossing, construct a new retaining wall, extend existing drainage culverts and upgrade the existing bungalow railroad crossing gates and railroad signal to the current standards. In addition, this project will relocate an existing signal pole and provide conduit for future use of fiber optics. This project will reduce congestion on Bell Road by removing the right turns from the existing shared through-right lane configuration and allowing a safe right turn from a dedicated right turn lane. The estimated completion date is the December 31, 2005.

Enclosed are (11) eleven copies of the agreement between the City of Surprise and BNSF Railroad, (11) eleven copies of this letter, and (11) copies of a concept drawing per your request.

If you have any further questions or concerns, please contact me at 623-583-6025.

Sincerely,

Nicholas D. Mascia, P.E.
Traffic Engineer

cc Robert E. Maki
ndm

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AZ CORP COMMISSION
DOCUMENT CONTROL

ROADWAY IMPROVEMENT AGREEMENT

Bell Road, Surprise, AZ
U.S. DOT Number 025392A
Phoenix Subdivision
Mile Post 172.0
Line Segment 7208

THIS ROADWAY IMPROVEMENT AGREEMENT (hereinafter called, "Agreement"), is executed to be effective as of APRIL 11th, 2005, (hereinafter called, "Effective Date") by and between the City of Surprise, a Political Subdivision of the State of Arizona/a Municipal Corporation, herein represented and acting through its City Council (hereinafter called, "AGENCY"), and BNSF Railway Company, a Delaware Corporation (hereinafter called, "RAILROAD");

RECITALS:

WHEREAS, RAILROAD owns and operates a line of railroad in and through the City of Surprise, State of Arizona;

WHEREAS, AGENCY desires to improve the existing Bell Road at-grade crossing by adding a turn lane;

WHEREAS, the project is located at Bell Road, U.S. DOT crossing 025392A, within the City of Surprise as indicated on Exhibit A, attached hereto and incorporated herein;

WHEREAS, in the interest of aiding vehicular travel and public safety, the AGENCY is undertaking a project to relocate and install railroad crossing signals and activation equipment;

WHEREAS, AGENCY also desires RAILROAD to extend the existing crossing surface at Bell Road with a rubber crossing surface;

WHEREAS, the parties agree that the RAILROAD will receive no ascertainable benefit from the installation of advance warning signs, pavement marking stop bars or crossing signal equipment (hereinafter collectively called, "Crossing Signal Equipment");

WHEREAS, the AGENCY is paying for the acquisition and installation of crossing signal equipment and the new crossing surface at Bell Road;

WHEREAS, the RAILROAD agrees to purchase and install, at AGENCY'S sole expense, the crossing signal equipment and the new crossing surface described in the scope of work herein, and upon the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I - SCOPE OF WORK

1. The term "Project" as used in this agreement includes any and all work related to roadway improvement (hereinafter referred to as the "Roadway"), at Bell Road, U.S. DOT crossing 025392A, more particularly described on Exhibits A and D attached hereto and incorporated herein, including, but not

Form 0106 Rev. 10/04
Bell Road, Surprise, AZ
DOT 025392A

limited to, any and all changes to telephone, telegraph, signal and electrical lines and appurtenances, installation of advance warning signs and pavement marking stop bars, installation of any new crossing surface, temporary and permanent track work, fencing, grading, alterations to or new construction of drainage facilities, preliminary and construction engineering and contract preparation.

ARTICLE II – RAILROAD OBLIGATIONS

In consideration of the covenants of AGENCY set forth herein and the faithful performance thereof, RAILROAD agrees as follows:

1. In consideration of the faithful performance of the AGENCY's covenants contained herein, RAILROAD hereby grants to AGENCY, its successors and assigns, upon and subject to the terms and conditions set forth in this Agreement, a temporary non-exclusive license (hereinafter called, "Temporary Construction License") to construct the Roadway across or upon the portion of RAILROAD's right-of-way described further on Exhibit A, excepting and reserving RAILROAD's rights, and the rights of any others who have obtained, or may obtain, permission or authority from RAILROAD, to do the following:

- (a) Operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of said right-of-way;
- (b) Construct, operate, maintain, renew and/or relocate upon said right-of-way, without limitation, such facilities as the RAILROAD may from time to time deem appropriate, provided such facilities do not materially interfere with the AGENCY's use of the Roadway;
- (c) Otherwise use or operate the right-of-way as RAILROAD may from time to time deem appropriate, provided such use or operations does not materially interfere with the AGENCY's use of the Roadway.

Prior to commencing any work on RAILROAD's property or right-of-way, AGENCY must pay RAILROAD the sum of Four Thousand Two Hundred Twenty Four and No/100 Dollars (\$4,224.00) as compensation for the Temporary Construction License. The term of the Temporary Construction License begins on the Effective Date and ends on the earlier of (i) substantial completion of the Project, or (ii) twelve (12) months following the Effective Date. The Temporary Construction License and related rights given by RAILROAD to AGENCY in this provision are without warranty of title of any kind, express or implied, and no covenant of warranty of title will be implied from the use of any word or words herein contained. The Temporary Construction License is for construction of the Project only and shall not be used by AGENCY for any other purpose. AGENCY acknowledges and agrees that AGENCY shall not have the right, under the Temporary Construction License, to use the Roadway. In the event AGENCY is evicted by anyone owning, or claiming title to or any interest in said right-of-way, RAILROAD will not be liable to AGENCY for any damages, losses or any expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, will not impair or interfere with the rights granted to AGENCY herein.

Upon receiving the payment from AGENCY described in the subsequent sentence and provided AGENCY is in compliance with the terms and conditions of this Agreement, RAILROAD will grant to AGENCY, its successors and assigns, an easement (hereinafter called, the "Easement") to enter upon and use that portion of RAILROAD's right-of-way as is necessary to use and maintain the Roadway, substantially in the form of Exhibit B attached to this Agreement. AGENCY must pay RAILROAD the sum of Thirteen Thousand Two Hundred and No/100 Dollars (\$13,200.00) as compensation for the Easement within thirty (30) days of issuing a Notice to Proceed pursuant to Article III, Section 16 of this Agreement. If AGENCY fails to pay RAILROAD within the thirty day time period set forth in the preceding sentence, RAILROAD may stop construction of the Project until full payment is received by RAILROAD.

2. The RAILROAD will, using its own labor forces under applicable labor agreements, install the Crossing Signal Equipment and the new crossing surface at Bell Road. The work will be performed at

AGENCY's expense and in accordance with the MUTCD and the plans and specifications approved by AGENCY and the Federal Highway Administration. The plans and specifications are attached to this Agreement as Exhibit A and incorporated herein.

3. A detailed estimate of RAILROAD'S construction engineering, installation labor (including the costs, if any, of electrical service from a public utility) and material costs required for the Project are attached hereto as Exhibit D and incorporated herein. In the event construction for the Project has not commenced within six (6) months following the effective date of this Agreement, RAILROAD may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit D. In such event, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of work incidental to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this Agreement upon written approval of AGENCY, which approval will not be unreasonably withheld.

4. The RAILROAD will, at AGENCY'S expense, dispose of all scrap from the RAILROAD'S work hereunder.

5. AGENCY agrees to reimburse RAILROAD for work of an emergency nature caused by AGENCY or AGENCY's contractor in connection with the Project which RAILROAD deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or RAILROAD property. Such work may be performed by RAILROAD without prior approval of AGENCY and AGENCY agrees to fully reimburse RAILROAD for all such emergency work.

6. RAILROAD may charge AGENCY for insurance expenses, including self-insurance expenses when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the Project. Such charges will be considered part of the actual cost of the Project, regardless of the nature or amount of ultimate liability for injury, loss or death to RAILROAD's employees, if any.

7. During the construction of the Project, RAILROAD will send AGENCY progressive invoices detailing the costs of the railroad work performed by RAILROAD under this Agreement. AGENCY must reimburse RAILROAD for completed force-account work within thirty (30) days of the date of the invoice for such work. Upon completion of the Project, RAILROAD will send AGENCY a detailed invoice of final costs, segregated as to labor and materials for each item. Pursuant to this section and Article IV, Section 7 herein, AGENCY must pay the final invoice within ninety (90) days of the date of the final invoice. RAILROAD will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past our credit terms. The finance charge continues to accrue daily until the date payment is received by RAILROAD, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to AGENCY under this section.

ARTICLE III – AGENCY OBLIGATIONS

In consideration of the covenants of RAILROAD set forth herein and the faithful performance thereof, AGENCY agrees as follows:

1. Actual costs for engineering, materials and labor (including third party charges for the installation of electrical service) associated with the installation of the Crossing Signal Equipment and the new crossing surface must be paid by the AGENCY.

2. In the event the services of a consultant are needed after execution of this Agreement due to any exigency of the RAILROAD and the Project, the AGENCY and the RAILROAD will mutually agree, in writing, as to the selection of a consultant and the applicable scope of work to be performed by such

consultant. All work performed hereunder by any consultant and any resulting costs must be paid by AGENCY as a part of the costs for the Project.

3. During the installation of the Crossing Signal Equipment and the new crossing surface, RAILROAD will send AGENCY progressive invoices detailing the costs of the work performed by RAILROAD under this Agreement. AGENCY must reimburse RAILROAD for completed force-account work within thirty (30) days of the date of the invoice for such work. Upon completion of the Project, RAILROAD will send AGENCY a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit "D". Pursuant to this section, AGENCY must pay the final invoice within ninety (90) days of the date of the final invoice. RAILROAD will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past our credit terms. The finance charge continues to accrue daily until the date payment is received by RAILROAD, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to AGENCY under this section.

4. AGENCY must make any required application and obtain all required permits and approvals for the construction of the Project.

5. AGENCY must acquire all rights of way necessary for the construction of the Project.

6. AGENCY must make any and all arrangements for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than RAILROAD which may be necessary for the construction of the Project.

7. AGENCY must construct the Project as shown on the attached Exhibit A and do all work ("AGENCY's Work") provided for in the plans and specifications for the Project, except railroad work that will be performed by RAILROAD hereunder. AGENCY must furnish all labor, materials, tools and equipment for the performance of AGENCY's Work. The principal elements of AGENCY's Work are as follows:

- a) Installation of widened roadway, sidewalks, curbing and approaches;
- b) Provide suitable drainage, both temporary and permanent;
- c) All necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on RAILROAD's right-of-way;
- d) Installation of a pavement marking stop bar in accordance with the Manual on Uniform Traffic Control Devices (hereinafter called, "MUTCD");
- e) Installation of advance warning signs in accordance with the MUTCD; and
- f) Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of RAILROAD.

8. AGENCY's Work must be performed by AGENCY or AGENCY's contractor in a manner that will not endanger or interfere with the safe and timely operations of RAILROAD and its facilities.

9. In order to prevent damage to RAILROAD trains and property, AGENCY must require its contractor(s) to notify RAILROAD's Roadmaster at (602)382-5803 at least thirty (30) calendar days prior to requesting a RAILROAD flagman in accordance with the requirements of Exhibit C attached hereto. Additionally, AGENCY must require its contractor(s) to notify RAILROAD's Manager of Public Projects at (909)386-4472 thirty (30) calendar days prior to commencing work on RAILROAD property or near RAILROAD tracks.

10. AGENCY must include the following provisions in any contract with its contractor(s) performing work on said Project:

- (a) The contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on RAILROAD's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies. The contractor will be responsible for contacting RAILROAD's Engineering Representative (928-226-3850) and/or the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The contractor must also mark all Lines shown on the plans or marked in the field in order to verify their locations. The contractor must also use all reasonable methods when working in the RAILROAD right-of-way or on RAILROAD property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.
- (b) Failure to mark or identify these Lines will be sufficient cause for RAILROAD's Engineering Representative (928-226-3850) to stop construction at no cost to the AGENCY or RAILROAD until these items are completed.
- (c) In addition to the liability terms contained elsewhere in this Agreement, the contractor hereby indemnifies, defends and holds harmless RAILROAD for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of contractor, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by contractor, and/or its subcontractors, agents and/or employees, on RAILROAD's property or within RAILROAD's right-of-way, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on RAILROAD's property or within RAILROAD's right-of-way, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies). **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILROAD, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILROAD.**
- (d) The contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the construction. The contractor must cooperate fully with any telecommunications company(ies) in performing such rearrangements.

11. AGENCY must incorporate in each prime contract for construction of the Project, or the specifications therefor (i) the provisions set forth in Article III, Sections 8, 9, 10, and 12; (ii) the provisions set forth in Article IV, Sections 3, 4, 10 and 11; and (iii) the provisions set forth in Exhibit C and Exhibit C-1, attached hereto and by reference made a part hereof.

12. Except as otherwise provided below in this Section 12, all construction work performed hereunder by AGENCY for the Project will be pursuant to a contract or contracts to be let by AGENCY, and all such contracts must include the following:

- (a) All work performed under such contract or contracts within the limits of RAILROAD's right-of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by RAILROAD;

- (b) Changes or modifications during construction that affect safety or RAILROAD operations will be subject to RAILROAD's approval;
- (c) No work will be commenced within RAILROAD's right-of-way until each of the prime contractors employed in connection with said work must have (i) executed and delivered to RAILROAD a letter agreement in the form of Exhibit C-1, and (ii) delivered to and secured RAILROAD's approval of the required insurance; and
- (d) If it is in AGENCY's best interest, AGENCY may direct that the construction of the Project be done by day labor under the direction and control of AGENCY, or if at any time, in the opinion of AGENCY, the contractor has failed to prosecute with diligence the work specified in and by the terms of said contract, AGENCY may terminate its contract with the contractor and take control over the work and proceed to complete the same by day labor or by employing another contractor(s) provided; however, that any contractor(s) replacing the original contractor(s) must comply with the obligations in favor of RAILROAD set forth above and, provided further, that if such construction is performed by day labor, AGENCY will, at its expense, procure and maintain on behalf of RAILROAD the insurance required by Exhibit C-1.
- (e) To facilitate scheduling for the Project, AGENCY shall have its contractor give RAILROAD's Manager Public Projects (909-386-4472) thirty (30) days' advance notice of the proposed times and dates for work windows. RAILROAD and AGENCY's contractor will establish mutually agreeable work windows for the Project. RAILROAD has the right at any time to revise or change the work windows, due to train operations or service obligations. RAILROAD will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the Project.

13. AGENCY must advise the appropriate RAILROAD Manager of Public Projects, in writing, of the completion date of the Project within thirty (30) days after such completion date. Additionally, AGENCY must notify RAILROAD's Manager of Public Projects, in writing, of the date on which AGENCY and/or its contractor will meet with RAILROAD for the purpose of making final inspection of the Project.

14. TO THE FULLEST EXTENT PERMITTED BY LAW, AGENCY HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS RAILROAD, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) (I) THE USE, OCCUPANCY OR PRESENCE OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (II) THE PERFORMANCE, OR FAILURE TO PERFORM BY THE AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS, ITS WORK OR ANY OBLIGATION UNDER THIS AGREEMENT, (III) THE SOLE OR CONTRIBUTING ACTS OR OMISSIONS OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (IV) AGENCY'S BREACH OF THE TEMPORARY CONSTRUCTION LICENSE OR THE EASEMENT GRANTED TO AGENCY PURSUANT TO ARTICLE II OF THIS AGREEMENT, (V) ANY RIGHTS OR INTERESTS GRANTED TO AGENCY PURSUANT TO THE TEMPORARY CONSTRUCTION LICENSE OR THE EASEMENT DISCUSSED IN ARTICLE II OF THIS AGREEMENT, (VI) AGENCY'S OCCUPATION AND USE OF RAILROAD'S PROPERTY OR RIGHT-OF-WAY, INCLUDING, WITHOUT LIMITATION, SUBSEQUENT MAINTENANCE OF THE PROJECT BY AGENCY, OR (VII) AN ACT OR OMISSION OF AGENCY OR ITS OFFICERS, AGENTS, INVITEES,

EMPLOYEES OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER. THE LIABILITY ASSUMED BY AGENCY WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILROAD, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILROAD.

15. AGENCY must give RAILROAD's Manager of Public Projects written notice to proceed with the railroad work after receipt of necessary funds for the Project. RAILROAD will not begin the railroad work (including, without limitation, procurement of supplies, equipment or materials) until written notice to proceed is received from AGENCY.

ARTICLE IV – JOINT OBLIGATIONS

IN CONSIDERATION of the premises, the parties hereto mutually agree to the following:

1. All work contemplated in this Agreement must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect RAILROAD will be subject to RAILROAD's approval prior to the commencement of any such changes or modifications.
2. AGENCY must require its contractor(s) to reasonably adhere to the Project's construction schedule for all Project work. The parties hereto mutually agree that RAILROAD's failure to complete the railroad work in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this Agreement by RAILROAD and will not subject RAILROAD to any liability. Regardless of the requirements of the construction schedule, RAILROAD reserves the right to reallocate the labor forces assigned to complete the railroad work in the event of an emergency to provide for the immediate restoration of railroad operations (RAILROAD or its related railroads) or to protect persons or property on or near any RAILROAD owned property. RAILROAD will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by RAILROAD pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this Agreement by RAILROAD.
3. RAILROAD will have the right to stop construction work on the Project if any of the following events take place: (i) AGENCY (or any of its contractors) performs the Project work in a manner contrary to the plans and specifications approved by RAILROAD; (ii) AGENCY (or any of its contractors), in RAILROAD's opinion, prosecutes the Project work in a manner which is hazardous to RAILROAD property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) AGENCY fails to pay RAILROAD for the Temporary Construction License or the Easement pursuant to Article II, Section 1 of this Agreement. The work stoppage will continue until all necessary actions are taken by AGENCY or its contractor to rectify the situation to the satisfaction of RAILROAD's Division Engineer or until additional insurance has been delivered to and accepted by RAILROAD. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, RAILROAD may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of RAILROAD. RAILROAD's right to stop the work is in addition to any other rights RAILROAD may have including, but not limited to, actions or suits for damages or lost profits. In the event that RAILROAD desires to stop construction work on the Project, RAILROAD agrees to immediately notify the following individual in writing:

DR. ROBERT MAKI, P.E.
CITY ENGINEER
12425 W. BELL ROAD, SUITE D100

4. AGENCY must supervise and inspect the operations of all AGENCY contractors to assure compliance with the plans and specifications approved by RAILROAD, the terms of this Agreement and all safety requirements of the RAILROAD. If RAILROAD determines that proper supervision and inspection is not being performed by AGENCY personnel at any time during construction of the Project, RAILROAD has the right to stop construction (within or adjacent to its operating right-of-way). Construction of the Project will not proceed until AGENCY corrects the situation to RAILROAD's reasonable satisfaction. If RAILROAD feels the situation is not being corrected in an expeditious manner, RAILROAD will immediately notify CITY ENGINEER for appropriate corrective action.
5. AGENCY must, out of funds made available to it for the construction of the Project, reimburse RAILROAD in full for the actual costs of all work performed by RAILROAD under this Agreement.
6. The parties mutually agree that RAILROAD's preliminary engineering, design, and contract preparation costs described in Article II, Section 2 herein are part of the costs of the Project even though such work may have preceded the date of this Agreement.
7. The parties mutually agree that no construction activities for the Project, nor future maintenance of the Project once completed, will be permitted during the fourth quarter of each calendar year. Emergency work will be permitted only upon prior notification to RAILROAD's Network Operations Center (telephone number: 800-832-5452). The parties hereto mutually understand and agree that trains cannot be subjected to delay during this time period.
8. Subject to the restrictions imposed by Article IV, Section 7 above, the construction of the Project will not commence until AGENCY gives RAILROAD's Manager of Public Projects thirty (30) days prior written notice of such commencement. The commencement notice will reference RAILROAD's File Number: D.O.T. Crossing No. 025392A and must state the time that construction activities will begin.
9. In addition to the terms and conditions set forth elsewhere in this Agreement, RAILROAD and AGENCY agree to the following terms upon completion of construction of the Project:
 - (a) RAILROAD will, at its sole cost and expense, accept, operate and maintain Crossing Signal Equipment and the new crossing surface in proper condition.
 - (b) AGENCY will own and maintain, at its sole cost and expense, the roadway and appurtenances thereto, lighting, drainage and any access roadways installed pursuant to this Agreement.
10. AGENCY hereby grants to RAILROAD, at no cost or expense to RAILROAD, a permanent right of access from AGENCY property to RAILROAD tracks for maintenance purposes.
11. Notwithstanding the preceding provision, if any regulations, ordinances, acts, rules or other laws subsequently passed or amended by the AGENCY or any other appropriate governmental or legislative authority increase the AGENCY'S portion of maintenance costs under this Agreement, RAILROAD will receive the benefit of any such regulations, ordinances, acts, rules or other laws and the AGENCY'S increased portion of maintenance costs will be incorporated into and made a part of this Agreement.
12. Subject to the restrictions imposed by Article IV, Section 7 above, AGENCY must notify and obtain prior authorization from RAILROAD's Manager of Public Projects at (909)386-4472 before entering RAILROAD's right-of-way for maintenance purposes. If the construction work hereunder is contracted, AGENCY must require its prime contractor(s) to comply with the obligations set forth in Exhibit C and Exhibit C-1, as the same may be revised from time to time. AGENCY will be responsible for its contractor(s) compliance with such obligations.

13. RAILROAD may, at its expense, make future changes or additions to the railroad components of the Roadway, if necessary or desirable, in RAILROAD's sole discretion, including, without limitation the following: (i) the right to raise or lower the grade or change the alignment of its tracks, (ii) the right to lay additional track or tracks, or (iii) the right to build other facilities in connection with the operation of its railroad. Such changes or additions must not change or alter the highway components of the Project. If it becomes necessary or desirable in the future to change, alter, widen or reconstruct the highway components of the Project to accommodate railroad projects, the cost of such work, including any cost incidental to alteration of railroad or highway facilities made necessary by any such changes to the Roadway, will be divided between RAILROAD and AGENCY in such shares as may be mutually agreed to by the parties hereto.

14. AGENCY may, at AGENCY's sole expense, alter or reconstruct the highway components of the Roadway if necessary or desirable, due to traffic conditions or pedestrian or other recreational traffic; provided, however, that any such alteration or reconstruction must not encroach further upon or occupy the surface of RAILROAD's right-of-way to a greater extent than is contemplated by the plans and specifications to be approved by RAILROAD pursuant to Article III, Section 1 herein, without obtaining RAILROAD's prior written consent and the execution of a supplement to this Agreement or the completion of a separate agreement.

15. Any books, papers, records and accounts of the parties hereto relating to the work hereunder or the costs or expenses for labor and material connected with the construction will at all reasonable times be open to inspection and audit by the agents and authorized representatives of the parties hereto, as well as the State of Arizona and the Federal Highway Administration, for a period of one (1) year from the date of final RAILROAD invoice under this Agreement.

16. The covenants and provisions of this Agreement are binding upon and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the preceding sentence, neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party.

17. In the event construction of the Project does not commence within twelve (12) months of the Effective Date, this Agreement will become null and void.

18. If a railway or a highway improvement project necessitates rearrangement, relocation, or alteration of the Crossing Signal Equipment or the new crossing surface installed hereunder, the costs for such rearrangement, relocation or alteration will be the responsibility of the party requesting such changes.

19. If any of the Crossing Signal Equipment is partially or wholly destroyed, then such repair and/or replacement costs must be distributed among the parties as follows:

- (a) In the event the RAILROAD's sole negligence destroys or damages the Crossing Signal Equipment, RAILROAD must reimburse AGENCY for the costs to replace or repair such Crossing Signal Equipment.
- (b) In the event the Crossing Signal Equipment is damaged or destroyed by any other cause, AGENCY must, at its sole cost and expense, replace or repair such Crossing Signal Equipment.

20. If the Crossing Signal Equipment installed hereunder cannot, through age, be maintained, or, by virtue of its obsolescence, requires replacement, the cost of installation of new crossing signal equipment will be negotiated by the parties hereto on the basis of the current Federal Aid Railroad Signal Program participation and applicable AGENCY signal warrants at the time of replacement.

21. Neither termination nor expiration of this Agreement will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.

22. To the maximum extent possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.

23. This Agreement (including exhibits and other documents, manuals, etc. incorporated herein) is the full and complete agreement between RAILROAD and AGENCY with respect to the subject matter herein and supersedes any and all other prior agreements between the parties hereto.

24. Any notice provided for herein or concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

BNSF Railway Company:

BNSF's Manager of Public Projects
740 East Carnegie Drive
San Bernardino, CA 92408

AGENCY:

CITY OF SURPRISE ENGINEERING DEPT.
12425 W. Bell Road, Suite D100
SURPRISE, AZ 85374-9002

25. This Agreement is subject to the conflict of interest provision of the Arizona Revised Statute ("A.R.S.") § 38-511.

26. Notwithstanding any other provision of this Agreement, this Agreement may be terminated if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining AGENCY or obligations under this Agreement. AGENCY will pay RAILROAD for all costs incurred under this Agreement to the date of termination.

27. Any dispute, controversy, claim or cause of action arising out of or related to this Agreement shall be governed by Arizona law and may, but in no event need, be settled by submission with the consent of both parties to binding arbitration. Neither Party shall be entitled to recover any of its attorneys' fees or other costs from the other party incurred in any such dispute, controversy, claim or cause of action, but each party shall bear its own attorneys' fees and costs, whether the same is resolved through arbitration, litigation in a court, or otherwise.

28. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting this Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the review of and entry into this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first above written.

BNSF RAILWAY COMPANY

By: *Colleen K. DeJas*
Printed Name: Colleen K. DeJas
Title: Mgr. Public Projects

WITNESS:

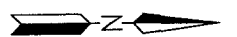
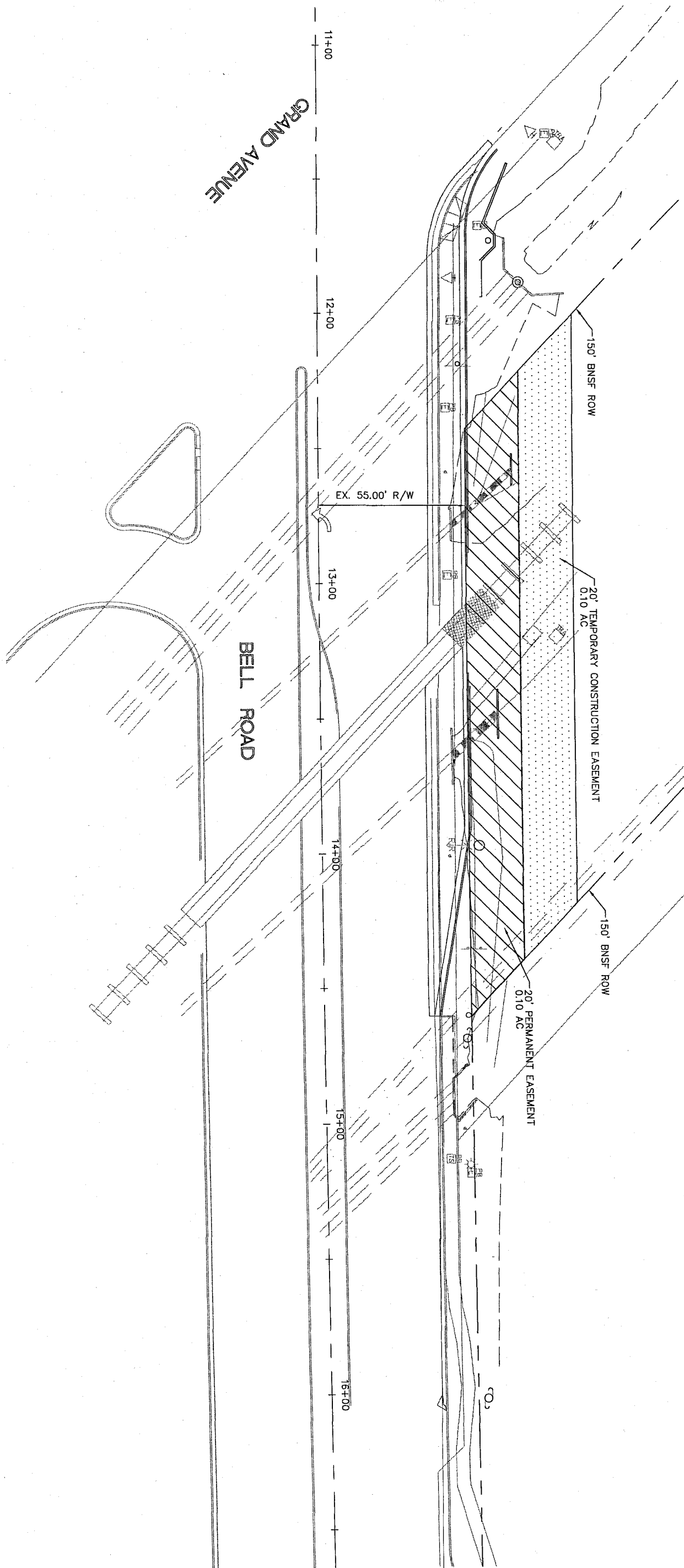
AGENCY

CITY OF SURPRISE

By: *Jim Rumpeltes*
Printed Name: Jim Rumpeltes
Title: City Manager

WITNESS:

EXHIBIT "A"



CMX PROJ:	6514.19
DATE:	1/18/05
SCALE:	1" = 40'
DRAWN BY:	CBT
CHECKED BY:	RRN

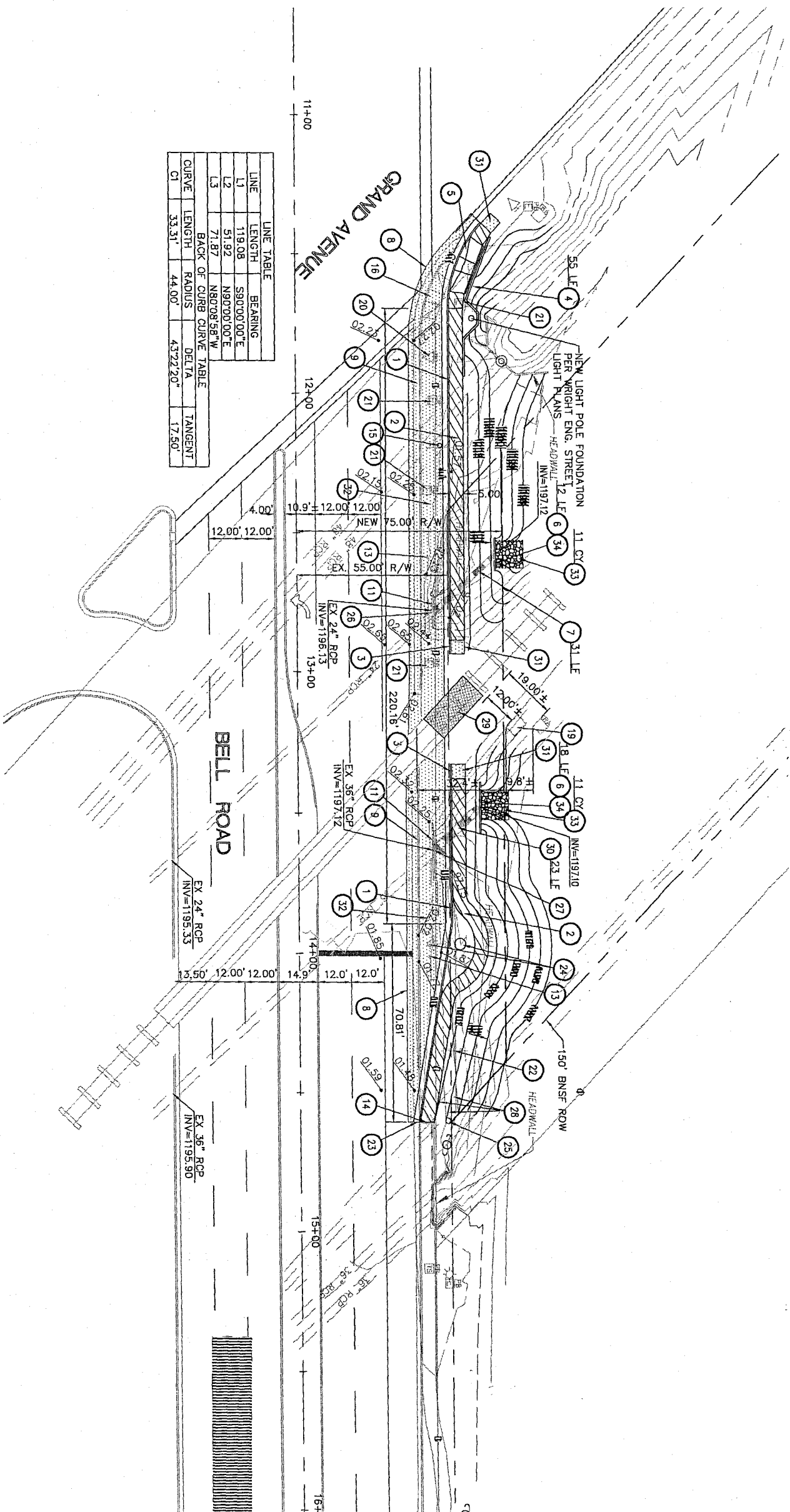
BELL RD AND GRAND AVE

SURPRISE, ARIZONA

BNSF EXHIBIT

7740 N. 16TH ST. STE.100
PHOENIX, AZ 85020
PH (602) 567-1900
FAX (602) 567-1901
www.cmxinc.com





LINE TABLE			
LINE	LENGTH	BEARING	
L1	119.08	S90°00'00"E	
L2	51.92	N90°00'00"E	
L3	71.87	N80°08'58"W	
BACK OF CURB CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	33.31	44.00'	43°22'20"
			17.50'

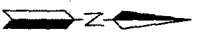


EXHIBIT "A"

PAVING NOTES	
1	CONSTRUCT VERTICAL CURB & GUTTER (H=6") PER A.D.O.T. DWG. NO. C-05.10, TYPE D1
2	CONSTRUCT 5' CONCRETE SIDEWALK PER A.D.O.T. DWG. NO. C-05.20
3	CONSTRUCT CURB TERMINAL SECTION, PER A.D.O.T. DWG. NO. C-05.10
4	CONSTRUCT MASONRY RETAINING WALL WITH HANDRAILS, PER A.D.O.T. STD. NO. B-18.50 & C.O.G. DTL 6-3560, SEE DETAIL ON SH1, CV-02
5	CONSTRUCT TYPE 1 SIDEWALK RAMP PER A.D.O.T. DWG. NO. C-05.30
6	CONSTRUCT HEADWALL PER MAG STD DTL 501-1 & 501-2, STRAIGHT TYPE
7	INSTALL 24" RGRCP CLASS III PIPE, LENGTH PER PLAN
8	SAW CUT A NEAT LINE AND MATCH EXISTING PAVEMENT, 2" MIN.
9	REMOVE EXISTING VERTICAL CURB AND GUTTER
10	REMOVE EXISTING HEADWALL
11	EXISTING GAS MARKER TO BE RELOCATED, COORDINATE WITH THE GAS COMPANY.
12	REMOVE EXISTING HANDRAIL CROSSING SIDEWALK
13	EXISTING TRAFFIC SIGN TO BE REMOVED
14	REMOVE EXISTING SIDEWALK RAMP
15	REMOVE EXISTING SIDEWALK TO BE REMOVED AND REPLACED BY RAILROAD
16	EXISTING TRAFFIC SIGNAL AND TRAFFIC SIGNAL BOX TO BE RELOCATED PER WRIGHT ENG. PLANS
17	EXISTING ELECTRIC BOX TO BE RELOCATED PER WRIGHT ENG. PLANS
18	EXISTING DIRECTIONAL SIGN TO BE RELOCATED NORTH 50' FROM EXISTING SIDEWALK
19	SAW CUT AND MATCH EXISTING CURB
20	EXISTING FLASHING LIGHTS AND GATE TO BE RELOCATED APPROX 11' NORTH BY RAILROAD. INSTALL CANTILEVER.
21	FOUND REBAR WITH CAP L.S. NO. 13362 TO REMAIN, RESET IF DISTURBED DURING CONSTRUCTION
22	REMOVE EXISTING 24" R.C.P. TO NEAREST JOINT AND CONNECT NEW 24" RGRCP IF REQUIRED, DUE TO DEFLECTION.
23	REMOVE EXISTING 36" R.C.P. TO NEAREST JOINT AND CONNECT NEW 36" RGRCP.
24	"CAUTION" OVERHEAD ELECTRIC AND TELEPHONE LINES
25	RUBBER PAD RAILROAD CROSSING BY RAILROAD
26	INSTALL 36" RGRCP CLASS III PIPE, LENGTH PER PLAN
27	CONSTRUCT 5' A.C. P.W.T. RAMP AND MATCH EXISTING GRADE
28	NEW A.C. PAVEMENT, MATCH EXISTING PAVEMENT IN KIND
29	INSTALL LOOSE RIPRAP, D50-6", 12" THICK, MINOR EROSION PROTECTION, CHECK TEXT FOR APPROVED EQUAL SEE DETAIL ON SHEET CV02
30	CONSTRUCT HANDRAIL PER A.D.O.T. STD. DTL. B-18.50 & C.O.G. DTL 6-3560, SEE DETAIL SHEET CV-02

602-263-1100

BELL ROAD RIGHT TURN LANE
BELL ROAD & GRAND AVENUE
SURPRISE, ARIZONA

BNSF EXHIBIT

CMX PROJ. 6514.19	DATE: MARCH 2005
SCALE: 1"=20'	DESIGNED: CMX
DRAWN: CMB	APPROVED: RRM
REV.	DWG. NO.
PV-01	SH1, 1 OF 1

Exhibit B

EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that **THE BNSF RAILWAY COMPANY**, (formerly Burlington Northern Railroad Company) a Delaware corporation, whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131-2830, Grantor, for _____ and No/100 Dollars (\$_____) to it paid by _____, a _____, Grantee, and the promises of the Grantee hereinafter specified, does hereby remise, release and quitclaim unto the Grantee, subject to the terms and conditions hereinafter set forth, an **EASEMENT** for the purpose of maintaining and operating the Project and for no other purpose, located at Railroad Mile Post _____, hereinafter called _____, over, upon and across the premises, situated in County of _____, State of _____, described as follows, to-wit:

LEGAL DESCRIPTION

RESERVING, however, unto the Grantor, its successors and assigns, the right to construct, place, operate, maintain, alter, repair, replace, renew, improve and remove communication lines above, below and on the surface of the premises, including, without limitation, transmission by conduit, fiber optics, cable, wire or other means of electricity, voice data, video, digitized information, or other materials or information, pipelines, utility lines, track and facilities including the right of ingress and egress in any such manner as does not unreasonably interfere with Grantee's use of the premises for said _____, and further reserving unto Grantor, its successors and assigns, all right and privilege of ingress and egress to said premises as Grantor, its successors and assigns may require to investigate and remediate environmental contamination and hazards, and further reserving the right and privilege to use said land for any and all purposes not inconsistent with the use thereof for said _____ purposes.

The foregoing easement is made subject to and upon the following express conditions:

1. To existing interests in the above-described premises to whomsoever belonging and of whatsoever nature and any and all extensions and renewals thereof, including but not limited to underground pipe line or lines, or any type of wire line or lines, if any.
2. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of said _____ shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing.

3. The Grantee shall bear the cost of removal, relocation or reconstruction of any and all right of way fences, telephone or telegraph poles, or other facilities, the removal, relocation or reconstruction of which may be made necessary by reason of the use of said premises for said _____ purposes.
4. The Grantee shall, at its own cost and expense, make adjustment with industries or other lessees of Grantor for buildings or improvements that may have to be relocated, reconstructed or destroyed by reason of the construction and maintenance of said _____ on said premises.
5. If during the construction or subsequent maintenance of said _____, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Grantee shall indemnify, protect and defend the Grantor from any and all liability, claims or demands, if any, which arise as a result of exposure and/or removal of said contaminated soils or materials. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an Agency having the capacity and authority to make such a determination.
6. Grantor and Grantee have entered into that certain Roadway Improvement Agreement dated as of _____ concerning the Premises (the "Roadway Improvement Agreement"). The terms of the Roadway Improvement Agreement are incorporated herein as if fully set forth in this instrument which terms shall be in full force and effect for purposes of this Easement even if the Underpass Agreement is, for whatever reason, no longer in effect.
7. The Grantee agrees to keep the above-described premises free and clear from combustible materials and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on said premises, said work of cutting and removal to be done at such times and with such frequency as to comply with Grantee and local laws and regulations and abate any and all hazard of fire.
8. The Grantee or its contractor(s) shall telephone Grantor's Communication Network Control Center at **(800) 533-2891** (a 24 hour number) to determine if fiber optic cable is buried anywhere on the premises; and if so, the Grantee or its contractor(s) will contact the telecommunications company(ies) involved, and make arrangements with the telecommunications company(ies) for protection of the fiber optic cable prior to beginning any work on the premises.
9. If said described premises, or any part thereof, shall at any time cease to be used by said Grantee, or by the public, for the purpose, as aforesaid, or should they be converted to any other use whatsoever, or should the Grantee fail to perform any of the conditions herein expressed, then and in any such event, all the right, title, interest, benefits and enjoyment of said Grantee, or of the public, in and to said premises, for any purposes whatsoever, shall immediately cease and the said Grantor, its successors and assigns, may, at its or their option, re-enter, retake and hold said described lands and premises as of the present estate of said Grantor without compensation to said Grantee, the public, or any other person whomsoever, for improvements or property removed, taken or destroyed, or liability for loss of, or damage to any premises or the improvements thereon abutting on said easement area or any part thereof.
10. The Grantor does not warrant its title to said premises nor undertake to defend the Grantee in the peaceable possession, use or enjoyment thereof; and the grant herein made is subject to all outstanding rights or interest of others, including the tenants and licensees of the Grantor.
11. This easement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns and successors of Grantor and Grantee.

TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging to Grantee for public use and enjoyment for the purposes aforesaid and for no other purpose whatsoever subject to the terms and conditions hereinbefore stated.

IN WITNESS WHEREOF, the said **BNSF RAILWAY COMPANY** has caused this instrument to be signed by its authorized officer, and the corporate seal affixed on the _____ day of _____, 200__

BNSF RAILWAY COMPANY

By: _____
D. P. Schneider
General Director Real Estate

ATTEST:

By: _____
Patricia Zbichorski
Assistant Secretary

EXHIBIT "C"
CONTRACTOR REQUIREMENTS

1.01 General

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of Bell Road, DOT 025392A, Surprise, Arizona.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1".
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations.
- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
- **1.01.06** The Contractor must notify (AGENCY) _____ and Railway's Manager Public Projects, telephone number 909-386-4472 at least thirty (30) calendar days before commencing any work on Railway Property. Contractors notification to Railway, must refer to Railroad's file, DOT 025392A.
- **1.01.07** For any falsework above any tracks or any excavations located, whichever is greater, within twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 1 ½ horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.
- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.contractororientation.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- **1.03.02** The Contractor must notify the Railway's General Manager at 505-864-4988 and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
 - 15' Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
 - 25' Horizontally from centerline of nearest track
 - 23'-3 1/2" Vertically above top of rail
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the Arizona Department of Transportation and must not be undertaken until approved in writing by the Railway, and until the Arizona Department of Transportation has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.
- **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by the City of Surprise for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a

"Temporary Private Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be at the expense of the Contractor.

- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.contractororientation.com, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

1.05 Protection of Railway Facilities and Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's Roadmaster Jim Grage at 602-382-5803 a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger and protective services and devices will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
 - **1.05.02a** When in the opinion of the Railway's Representative it is necessary to safeguard Railway's Property, employees, trains, engines and facilities.
 - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
 - **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
 - **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.

- **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
- **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
- **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
- **1.05.03c** The cost of flagger services provided by the Railway, when deemed necessary by the Railway's representative, will be borne by the City of Stockton. The estimated cost for one (1) flagger is \$800.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, transportation, meals, lodging and supervision. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. The flagging rate in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph.
- **1.05.03d** The average train traffic on this route is 12 freight trains per 24-hour period at a timetable speed 40 MPH. There are 0 passenger trains per 24-hour period at a timetable speed of NA MPH.

1.06 Contractor General Safety Requirements

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railroad's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come

in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.

- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.contractororientation.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railroad's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
- **1.06.09** The Contractor must not pile or store any materials, machinery or equipment closer than 25'-0" to the center line of the nearest Railway track. Materials, machinery or equipment must not be stored or left within 250 feet of any highway/rail at-grade crossings, where storage of the same will interfere with the sight distances of motorists approaching the crossing. Prior to beginning work, the Contractor must establish a storage area with concurrence of the Railroad's representative.
- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact Railroad Representative at 928-226-3850. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there

is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.

- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.08 Hazardous Waste, Substances and Material Reporting

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery; (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties; and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St _____ 2. Date: _____ Time: _____
County: _____ 3. Temperature: _____ 4. Weather _____
(if non-Railway location)
5. Social Security # _____
6. Name (last, first, mi) _____
7. Address: Street: _____ City: _____ St. _____ Zip: _____
8. Date of Birth: _____ and/or Age _____ Gender: _____
(if available)
9. (a) Injury: _____ (b) Body Part: _____
(i.e. (a) Laceration (b) Hand)
11. Description of Accident (To include location, action, result, etc.): _____

12. Treatment:
 ? First Aid Only
 ? Required Medical Treatment
 ? Other Medical Treatment

13. Dr. Name _____ 30. Date: _____
14. Dr. Address: _____
Street: _____ City: _____ St: _____ Zip: _____
15. Hospital Name: _____
16. Hospital Address: _____
Street: _____ City: _____ St: _____ Zip: _____
17. Diagnosis: _____

**FAX TO
RAILWAY AT (817) 352-7595
AND COPY TO
RAILWAY ROADMASTER FAX**

EXHIBIT "C-1"

**Agreement
Between
BNSF RAILWAY COMPANY
and the
CONTRACTOR**

BNSF RAILWAY COMPANY
Attention: Manager Public Projects
740 E Carnegie Drive
San Bernardino, CA 92408
909-386-4472 (office)
909-386-4513 (fax)

Railway File: Bell Road, DOT 025392A
Agency Project: _____

Gentlemen:

The undersigned (hereinafter called, the "Contractor"), has entered into a contract (the "Contract") dated _____, 200_, with City of Surprise for the performance of certain work in connection with the following project: Construction of Bell Road, DOT 025392A. Performance of such work will necessarily require contractor to enter BNSF RAILWAY COMPANY ("Railway") right of way and property ("Railway Property"). The Contract provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for City of Surprise (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with Railway as follows:

Section 1. RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY**

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE BOILER INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

Section 2. TERM

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

Section 3. INSURANCE

Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance must contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy must also contain the following endorsements, which must be indicated on the certificate of insurance:

- ◆ It is agreed that any workers' compensation exclusion does not apply to **Railroad** payments related to the Federal Employers Liability Act or a **Railroad** Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.
- ◆ The definition of insured contract must be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Any exclusions related to the explosion, collapse and underground hazards must be removed.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy.

B. Business Automobile Insurance. This insurance must contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

- C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:
- ◆ Arizona's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
 - ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.
- D. Railroad Protective Liability insurance naming only the **Railroad** as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 10 93 and include the following:
- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
 - ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
 - ◆ Endorsed to remove any exclusion for punitive damages.
 - ◆ No other endorsements restricting coverage may be added.
 - ◆ The original policy must be provided to the **Railroad** prior to performing any work or services under this Agreement

Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against **Railroad** for all claims and suits against **Railroad**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railroad** for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railroad** for loss of its owned or leased property or property under contractor's care, custody or control.

Contractor's insurance policies through policy endorsement, must include wording which states that the policy is primary and non-contributing with respect to any insurance carried by **Railroad**. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) must include a severability of interest endorsement and **Railroad** must be named as an additional insured with respect to work performed under this agreement. Severability of interest and naming **Railroad** as additional insured must be indicated on the certificate of insurance.

Contractor is not allowed to self-insure without the prior written consent of **Railroad**. If granted by **Railroad**, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by contractor in lieu of insurance. Any and all **Railroad** liabilities that would otherwise, in accordance with the provisions of this **Agreement**, be covered by contractor's insurance will be covered as if contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, contractor must furnish to **Railroad** an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify **Railroad** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from **Railroad**, a certified duplicate original of any required policy must be furnished. Contractor should send the certificate(s) to the following address:

The Burlington Northern and Santa Fe Railway Company
P.O. Box 12010-BN
Hemet, California 92546-8010
Fax: 909-766-2299

Any insurance policy must be written by a reputable insurance company acceptable to **Railroad** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provide.

Contractor represents that this **Agreement** has been thoroughly reviewed by contractor's insurance agent(s)/broker(s), who have been instructed by contractor to procure the insurance coverage required by this **Agreement**. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, **Railroad** may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by contractor, contractor must require that the subcontractor provide and maintain the insurance coverages set forth herein, naming **Railroad** as an additional insured, and requiring that the subcontractor release, defend and indemnify **Railroad** to the same extent and under the same terms and conditions as contractor is required to release, defend and indemnify **Railroad** herein.

Failure to provide evidence as required by this section will entitle, but not require, **Railroad** to terminate this **Agreement** immediately. Acceptance of a certificate that does not comply with this section will not operate as a waiver of contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by contractor will not be deemed to release or diminish the liability of contractor including, without limitation, liability under the indemnity provisions of this **Agreement**. Damages recoverable by **Railroad** will not be limited by the amount of the required insurance coverage.

For purposes of this section, **Railroad** means "Burlington Northern Santa Fe Corporation", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

Section 4. EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit "C" attached to the Contract and this Agreement, , including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

Section 5. TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and

incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay for certain trains may be as high as \$50,000.00 per incident.

Contractor and its subcontractors must give Railway's representative (928) 226-3850 thirty (30) days advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

(Contractor)

By: _____
Printed Name: _____
Title: _____

BNSF Railway Company

By: _____
Name: _____
Manager Public Projects

Contact Person: _____
Address: _____

City: _____ State: _____ Zip: _____
Fax: _____
Phone: _____
E-mail: _____

Accepted and effective this _____ day of _____ 20__.

EXHIBIT D - SIGNAL

The Burlington Northern & Santa Fe Railway Company

PHOENIX

TO WILLIAMS JCT.

EASTWARD APPR. 3091'
49 MPH

WESTWARD APPR. 3091'
49 MPH

120' MIN.

14'

50' MIN.

12'

12'

12'

12'

12'

12'

12'

12'

12'

12'

12'

12'

12'

12'

12'

12'

12'

12'

12'

12'

12'

12'

12'

12'

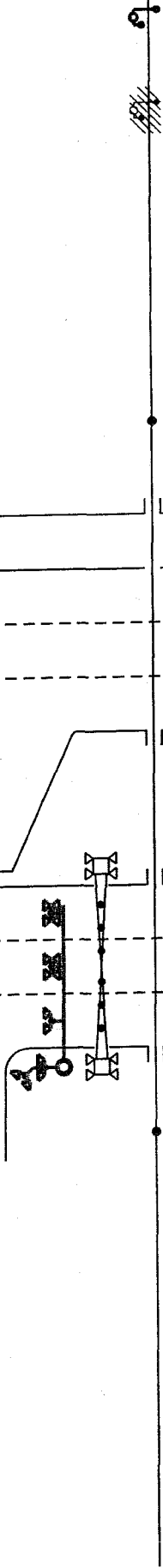
12'

12'

12'

12'

12'



BELL ROAD
001' - 025 392 A

ROAD WIDENING PROJECT
F/NEW TURN LANE

INSTALL: GATES & FLASHERS

CONTROL DEVICES: CONSTANT WARNING

ALVAGE: NONE

INSTRUMENT HOUSE

BELL

METER

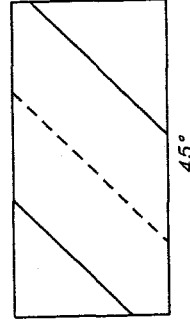
CROSSING CONTROL CONNECTIONS

BIDIRECTIONAL CROSSING CONTROL

UNIDIRECTIONAL CROSSING CONTROL

COUPLER OR TERMINATION

GUARD RAIL



NOTE:

STATE FUNDED PORTION OF PROJECT
CITY FUNDED PORTION OF PROJECT

BNSF RAILWAY CO.

SURPRISE, AZ

BELL ROAD

LS: 7208

M.P. 172.00

DOT # 025 392 A

DIVISION SOUTHWEST

SUBDIVISION PHOENIX

KANSAS CITY

NO SCALE

DATE: 03/30/05

FILE: 7208172-00.dwg

Warning device placement:

Clearance to C.L. Track = Min. 12', Max. 20'

Edge of Road to C.L. Foundation:

Min. 4'3" with curb,

Min. 8'3" without curb,

Max. 12'

House Clearance:

25' Min. to Near Rail

30' Min. to Edge of Road

ALL LIGHTS TO BE LED

EXHIBIT D - SIGNAL

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

THE B. N. S. F. RAILWAY COMPANY
FHPM ESTIMATE FOR
CITY OF SURPRISE

LOCATION:- SURPRISE DETAILS OF ESTIMATE PLAN ITEM: 000092416 VERSION: 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

RELOCATE FLASHER WITH GATE AND INSTALL NEW BUNGALOW AND LONGER CANTILEVER DUE TO ROAD
WIDENING AT BELL ROAD IN SURPRISE, AZ. SOUTHWEST DIV., PHOENIX SUBDIV., L/S 7208, M.P.
172.01, DOT # 025392A
THIS ESTIMATE IS FOR CITY FUNDED PORTION OF CROSSING PROJECT.

THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTATIVE PACKAGES USED FOR ESTIMATING PURPOSE
ONLY.

THEY CAN BE EXPECTED TO CHANGE AFTER THE ENGINEERING PROCESS, DETAILED AND ACCURATE
MATERIAL LISTS WILL BE FURNISHED WHEN ENGINEERING IS COMPLETED.
CONTINUING CONTRACTS HAVE BEEN ESTABLISHED FOR PORTIONS OF SIGNAL WORK ON THE BNSF
RAILROAD.

THIS ESTIMATE GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR
MATERIAL, LABOR, AND OVERHEADS.

***** SIGNAL WORK ONLY *****

THE CITY OF SURPRISE IS FUNDING THIS PROJECT 100%.

MAINTAIN PROPRIETARY CONFIDENTIALITY

DESCRIPTION	QUANTITY	U/M	COST	TOTAL \$

LABOR				

SIGNAL FIELD LABOR - CAP	560.00	MH	11,922	
SIGNAL SHOP LABOR - CAP	64.00	MH	1,412	
PAYROLL ASSOCIATED COSTS			10,756	
EQUIPMENT EXPENSES			3,338	
DA LABOR OVERHEADS			12,005	
INSURANCE EXPENSES			2,102	
TOTAL LABOR COST			41,535	41,535

MATERIAL				

BUNGALOW 6X6	1.00	EA N	5,450	
BUNGALOW MATERIAL	1.00	EA N	4,550	
CABLE	1.00	EA N	1,200	
CANTILEVER COMPLETE, 40 FT.	1.00	EA N	17,500	
COUNTER WEIGHTS	1.00	LS N	200	
FOUNDATION, GATE	1.00	EA N	435	
GATE ARM COMPLETE	2.00	EA N	1,530	
LED LIGHT ADJUSTMENT	10.00	EA N	2,530	
LED LIGHT GATE KIT	2.00	EA N	730	
MISC. MATERIAL	1.00	EA N	1,500	
SHUNT PLATE, SIGN, ECT.	1.00	LS N	200	
SHUNT, NBS	1.00	EA N	299	
WIRE SPLICE	11.00	EA N	1,100	
USE TAX			1,947	
OFFLINE TRANSPORTATION			462	
TOTAL MATERIAL COST			39,633	39,633

OTHER				

CONCRETE/FOUNDATION CANT.	1.00	LS N	1,000	
CONTRACT ENGR.	1.00	EA N	2,000	
FILL DIRT	6.00	CY N	150	
TOTAL OTHER ITEMS COST			3,150	3,150
PROJECT SUBTOTAL				84,318
CONTINGENCIES				8,431
BILL PREPARATION FEE				464

EXHIBIT D - SIGNAL

GROSS PROJECT COST
LESS COST PAID BY BNSF

93,213
0

TOTAL BILLABLE COST

93,213

EXHIBIT D - TRACK

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

THE B. N. S. F. RAILWAY COMPANY
FHPM ESTIMATE FOR
CITY OF SURPRISE

LOCATION:- BEARDSLEY DETAILS OF ESTIMATE PLAN ITEM: PTR025392A VERSION: 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

EXTEND EXISTING BELL ROAD CROSSING DOT #025 392 A, 24 FT EASTERLY TO ACCOMMODATE A RIGHT TURN AND 5 FT. SIDEWALK AT BEARDSLEY, MP 172.04, PHOENIX SUBDIVISION, SWW DIVISION.

RFA NO. 95-062-04

AUTHORITY NO. 7-XXXX-04

DESCRIPTION	QUANTITY	U/M	COST	TOTAL \$

LABOR				

FLAGGING - GRADING - CAP	50.00	MH	991	
PLACE FIELD WELDS - CAP	52.80	MH	1,104	
PLACE PUBLIC CROSSING - CAP	61.60	MH	1,193	
REPLACE PUBLIC CROSSING - OPER	138.60	MH	2,683	
REPLACE TRACK PANELS - CAP	13.20	MH	256	
REPLACE TRACK PANELS - OPER	48.40	MH	937	
SURFACE TRACK - REPLACEMENT - CAP	17.44	MH	361	
SURFACE TRACK - REPLACEMENT - OPER	35.20	MH	731	
UNLOAD BALLAST - REPLACEMENT - CAP	15.40	MH	299	
UNLOAD CROSSING MATERIAL - PUBLIC - CAP	30.80	MH	597	
PAYROLL ASSOCIATED COSTS			7,378	
EQUIPMENT EXPENSES			4,841	
DA LABOR OVERHEADS			8,231	
PERDIEM EXPENSES			312	
INSURANCE EXPENSES			1,440	
TOTAL LABOR COST			31,354	31,354

MATERIAL				

TRACK PANEL, 136# 39 FT PNDRL, 10FT TIES	1.00	EA	3,528	
WELDKIT, GENERIC FOR ALL RAIL WEIGHTS	6.00	KT	318	
CONC 136 08-SEC WITH FILLER FOR WOOD	24.00	FT	3,671	
BALLAST, TRUCKED AND DELIVERED	100.00	NT	2,000	
MATERIAL HANDLING			474	
ONLINE TRANSPORTATION			924	
USE TAX			498	
OFFLINE TRANSPORTATION			94	
TOTAL MATERIAL COST			11,507	11,507

OTHER				

CLOSURE PLAN AND BARRICADES	1.00	LS	10,000	
DUMP FEES	1.00	LS	2,000	
LOADER WITH OPERATOR	5.00	DAY	5,000	
REPLAVE APPROACHES	1.00	LS	15,000	
TOTAL OTHER ITEMS COST			32,000	32,000
PROJECT SUBTOTAL				74,861
CONTINGENCIES				5,774
BILL PREPARATION FEE				404
GROSS PROJECT COST				81,039
LESS COST PAID BY BNSF				0
TOTAL BILLABLE COST				81,039

TRANSMITTAL

TO: Arizona Corporation Commission
400 W. Congress
Tucson, AZ 85701

DATE: April 14, 2005

ATTN: Don Thompson

RE: Bell Rd and Grand Ave
Project No. 6514.19

We are transmitting the following items:

COPIES	DESCRIPTION
11	City of Surprise and BNSF agreement
11	Letter from the City of Surprise
11	Project Striping Plan

These are transmitted as checked below:

- | | |
|---|---|
| <input checked="" type="checkbox"/> As requested | <input type="checkbox"/> For your review and comment |
| <input type="checkbox"/> For your use or information | <input checked="" type="checkbox"/> For your approval (and signature) |
| <input type="checkbox"/> Please review and return by: _____ | <input type="checkbox"/> Acknowledge receipt of enclosures |

REMARKS:

Per our conversation, enclosed are the requested items that are required to review and approve the proposed project.

Please call Dick Norton if you have any questions. Thank you.

cc:

SINCERELY:


Brad Tackett, E.I.T.